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Date: 1/12/2009 5:36 PM
Subject: Exposures to human and Plant Nutrients in Human Food

Ms. Kammerer,

It has been our pleasure at the California Department of Food and Agriculture ("CDFA") to work with you and OEHHA on the initial phases of the proposed regulatory concept for exposures to human and plant nutrients in human food. Included below, are some of CDFA's thoughts informed by CDFA's Fertilizing Materials Inspection Program ("FMIP") and previously shared at your pre-regulatory workshop on December 12, 2008. CDFA also extends an offer of assistance from FMIP as OEHHA evaluates moving forward with formal rulemaking. We believe FMIP's charge of ensuring consumers receive materials that are safe and effective while meeting the quality and quantity guaranteed on their label may serve OEHHA well moving forward.

As we know from experience, most regulations, no matter how carefully drafted and reviewed, carry with them an unknown level of unintended consequences. This is certainly no exception. Of most concern is the applicability of the proposed exemption under §25507 where "person(s) causing the exposure can show that the chemical is naturally occurring in the food... or was added to the soil or other growing media in an amount necessary for healthy plant development..." How far up the food supply chain does this apply? For example, would a farmer be required to maintain a crop record documenting the addition of an essential plant nutrient to the soil? Would this documentation be required to be submitted to OEHHA or maintained on site in the event of litigation?

CDFA also has some concerns relating to the potential impacts to international trade. If Boron, for example, was listed as a Prop 65 chemical /element how would this impact many of the commodities we export domestically and internationally that are naturally high in Boron? While we understand the intent of the proposed exemption currently under consideration, we can not help but be concerned as to how the future listing of individual elements may impact how fresh fruits and vegetables are viewed on the export market.

Finally, there is self regulating function that applies to the application of nutrients to maximize the production of a healthy crop. Any amendment that is added to the soil is an input cost to the production of the crop and is therefore applied at the minimal levels to maximize results. In fact, applying nutrients in non-agronomic amounts can severely impact the viability of the plant and result in toxicity that either negatively impacts yields or even kills the plant.

We have appreciated OEHHA's inclusion during the consideration of the proposed regulatory concept and both Amrith Gunasekara of our FMIP and myself are available to answer questions or assist as OEHHA considers moving forward.

Best Regards,

John Hewitt

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